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8
9 **BEFORE THE**
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. C081208-01

12 **JAMES J. MAY**
13 **8810-C Jamacha Blvd., #140**
14 **Spring Valley, CA 91977**
Residential License No. AL034266

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Elizabeth Seaters acting on behalf of the Office of Real Estate Appraisers
20 (Complainant), brings this Accusation solely in her official capacity as the Acting Chief of
21 Enforcement of the Office of Real Estate Appraisers.

22 2. On or about February 16, 2005, the Director of the Office of Real Estate Appraisers
23 issued Residential License Number AL034266 to James J. May (Respondent). Said license was
24 closed and renewed yearly from June 3, 2006 to June 3, 2010, when it expired.

25 **JURISDICTION**

26 3. This Accusation is brought before the Director of the Office of Real Estate Appraisers
27 (Director), under the authority of the following laws. All section references are to the Business
28 and Professions Code unless otherwise indicated.

4. Section 11313 of the Code requires the Office of Real Estate Appraisers (OREA) to adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of the Real Estate Appraisers' law.

5. Section 11314 of the Code requires OREA to include in its regulations requirements for the licensure and discipline of real estate appraisers.

6. Section 11319 of the Code provides that the Uniform Standards of Professional Appraisal Practice (USPAP) constitute the minimum standards of conduct and performance for real estate appraisers.

STATUTORY PROVISIONS

7. Business and Professions Code section 11328 states:

"To substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that requires a license, that licensee, applicant, or person shall, upon the request of the director, submit copies of appraisals, or any work product which is addressed by the Uniform Standards of Professional Appraisal Practice, and all supporting documentation and data to the office. This material shall be confidential in accordance with the confidentiality provisions of the Uniform Standards of Professional Appraisal Practice."

REGULATORY PROVISIONS

8. The OREA regulations, as amended from time to time, appear in Title 10, Chapter 6.5, section 3500, et seq., of the California Code of Regulations (Regulation).

9. Regulation 3500 (b) (19), states:

“Uniform Standards of Appraisal Practice; (USPAP)” means those standards as adopted by the Appraisal Standards Board of the Appraisal Foundation.”

10. Regulation 3701 provides that licensees shall conform to and observe USPAP, and any subsequent amendments thereto, as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are incorporated into OREA's regulations by reference as if fully set forth therein.

11. Regulation 3702 states, in pertinent part:

"(a) The Director finds and declares as follows:

"(1) That the profession of real estate appraisal is vested with a fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession.

"....

"(3) Every holder of a license to practice real estate appraisal . . . shall be required to demonstrate by his or her conduct that he or she possess the qualifications of honesty, candor, integrity and trustworthiness.

"...."

12. Regulation 3705(a) states:

"Every appraisal report subject to the Uniform Standards of Professional Appraisal Practice upon final completion shall bear the signature and license number of the appraiser and of the supervising appraiser, if appropriate. The affixing of such signature and number constitute the acceptance by the appraiser and supervising appraiser of full and personal responsibility for the accuracy, content, and integrity of the appraisal under Standards Rules 1 and 2 of USPAP."

13. Regulation 3721 provides, in pertinent part, that the Director of OREA may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke a license of any person who has violated any provision of USPAP or Real Estate Appraisers' Licensing and Certification Law or done any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another.

USPAP

14. The Uniform Standards of Professional Appraisal Practice (USPAP) includes the following provisions.

15. *The Conduct Section of the Ethics Rule* provides, in pertinent part, that an appraiser must perform assignments ethically and competently, in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). The Rule also provides that an appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. An appraiser must not perform as an advocate for any party or issue, or accept

1 an assignment that includes the reporting of predetermined opinions and conclusions. An
2 appraiser must not communicate results in a misleading or fraudulent manner. An appraiser must
3 not use or communicate a misleading or fraudulent report or knowingly permit an employee or
4 other person to communicate a misleading or fraudulent report.

5 16. *The Scope of Work Rule* provides, in pertinent part, that an appraiser must identify
6 the problem to be solved, determine and perform the scope of work necessary to develop credible
7 assignment results, and disclose the scope of work in the report.

8 17. USPAP Standards Rule (SR) 1-1 states:

9 In developing a real property appraisal, an appraiser must:

10 (a) be aware of, understand, and correctly employ those recognized methods
11 and techniques that are necessary to produce a credible appraisal;

12 (b) not commit a substantial error of omission or commission that
13 significantly affects an appraisal; and

14

15 18. SR 1-2(e)(i) states in pertinent part:

16 That in developing a real property appraisal, an appraiser must identify the
17 characteristics of the property that are relevant to the type and definition of value
18 and intended use of the appraisal, including its location and physical, legal, and
19 economic attributes.

20 19. SR 1-4 states in pertinent part:

21 In developing a real property appraisal, an appraiser must collect, verify, and
22 analyze all information necessary for credible assignment results.

23 (a) When a sales comparison approach is necessary for credible assignment results,
24 an appraiser must analyze such comparable sales data as are available to indicate a value
25 conclusion.

26

27 20. SR 1-5(a) states in pertinent part:

28 In developing a real property appraisal, when the value of the opinion to be
developed is market value, an appraiser must, if such information is available to
the appraiser in the normal course of business, analyze all agreements of sale,
options, or listings of the subject property current as of the effective date of the

appraisal; and analyze all sales of the subject property that occurred with the three (3) years prior to the effective date of the appraisal.

21. SR 2-1(a)(b) states in pertinent part:

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

22. SR 2-2-(b)(iii)(viii) (ix) states in pertinent part:

That the content of a Summary Appraisal Report must be consistent with the intended use of the appraisal, and, at a minimum:

"....

"(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

....

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and the rationale for that opinion.

....

COST RECOVERY

23. Section 11409(a) of the Code provides that any order issued in resolution of a disciplinary proceeding may direct a licensee found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

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2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Violations of USAP for Westlake Drive Properties, San Marcos, California)**

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5 24. Between May 3, 2008 and May 7, 2008, Respondent completed appraisal reports
6 for the properties located at 207 Westlake Drive No. 1, San Marcos, California; 215 Westlake
7 Drive No. 1, San Marcos, California; 215 Westlake Drive No. 3, San Marcos, California; 215
8 Westlake Drive No. 8, San Marcos, California; and 213 Westlake Drive No. 5, San Marcos,
9 California. The reports contain certain errors or omissions, listed below, in violation of the
10 Uniform Standards of Professional Appraisal Practice (USPAP) and the California Business and
11 Professions Code, Division 4, listed as follows:
12

13 a. Respondent reported that a purchase agreement for the pending sale of the subject
14 property was reviewed but failed to disclose the negative aspects of the contract. The contract
15 was highly atypical in that: (1) The buyers did not have the right to inspect the units; (2) the
16 transaction was described as an "As-Is Where-Is sale," specifically excluding the buyer from
17 remedies against the builder/developer. These unusual contractual terms should have been
18 reported as they placed the borrower and lender at severe risk (Conduct Section of the Ethics
19 Rule, S.R. 1-1(a), (b) 1-5(a), 2-1(a), (b), and 2-2(b)(viii));
20

21 b. Respondent failed to accurately report the characteristics of the subject
22 neighborhood and the subject property. Respondent incorrectly reported condominium unit
23 housing trends had stable values and that supply and demand were balanced. Respondent
24 incorrectly reported that the predominant sale prices in the neighborhood were \$375,000.
25 Developer sales of \$375,000 included significant concessions. Respondent failed to report and
26 analyze the significant effect of the numerous bank owned properties on the market in the subject
27
28

1 property development at the time of the appraisal (S.R. 1-1(a), (b), 1-2(e)(i), 2-1(a), (b), 2-
2 2(b)(iii), and the Conduct and Scope of Work Sections of the Ethics Rule);

3 c. Respondent failed to report and analyze the characteristics of the subject properties
4 and the development. Respondent reported the zoning to be "R-1," with a description of "single
5 family residence." The actual zoning was R-3-6, and was described as medium density
6 residential. Respondent reported the project site size to be "Primary Residential," rather than
7 describing the 3.62 acre site. Respondent incorrectly reported that less than ten percent of the
8 properties were non-owner occupied and that all of the condominium conversions had been sold
9 by the developer. The developer made a bulk sale of the problematic unsold inventory to Equity
10 Finders LLC. The subject properties and all of Respondent's comparables in the Sales
11 Comparison Approach were part of the unsold inventory that were being marketed to straw
12 buyers (S.R. 1-1(a), (b), 1-2(e)(i), 2-1(a), (b), 2-2(b)(iii), 2-2(b)(ix), and the Conduct Section of
13 the Ethics Rule);
14

15 d. Respondent used inappropriate sales in the Sales Comparison Approach.
16 Respondent considered only sales arranged by Equity Finders LLC. Units offered on MLS from
17 parties other than Equity Finders LLC were not analyzed. Competing units outside of the subject
18 property development did not support the inflated sale prices influenced by Equity Finders LLC.
19 The non-arms-length transactions analyzed were higher priced than the peak prices found in the
20 development in 2005 and 2006, in spite of the strongly declining marketplace heavily influenced
21 by the sale of lender owned properties (S.R. 1-1(a), (b), 1-4(a), 2-1(a), (b), and 2-2(b)(viii));
22

23 e. Based on a through d above, Respondent prepared misleading reports (Conduct
24 Section of the Ethics Rule, S.R. 1-1(a), (b), and 2-1(a), (b)); and
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1 f. Respondent failed to provide a true and correct copy of the appraisal reports and
2 associated work files when requested. Respondent failed to cooperate with the investigation
3 (Business and Professions Code Section 11328).
4

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violations of USAP for North Escondido Blvd Properties, Escondido, California)**

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8 25. Between May 1, 2008 and May 10, 2008, Respondent completed individual
9 appraisal reports for the following converted condominium units located at 1350 North Escondido
10 Boulevard, Escondido, California: Unit No.'s 2, 5, 50, 53, 63, and 69. The reports contained
11 certain errors or omissions, listed below, in violation of the Uniform Standards of Professional
12 Appraisal Practice (USPAP) and the California Business and Professions Code, Division 4, listed
13 as follows:
14

15 a. Respondent failed to accurately report the characteristics of the subject
16 neighborhood and the subject property. Respondent incorrectly reported condominium unit
17 housing trends had stable values and that supply and demand were balanced. According to
18 published sources, sale prices of condominiums declined during the time represented in the
19 appraisal. Developer sales of \$310,000 included significant concessions. Respondent failed to
20 report and analyze the effect of the bank owned properties on the market in the subject property
21 development at the time of the appraisal. These listings had asking prices of \$138,255 to
22 \$150,000 and strongly influenced the marketplace. Of the 24 attached homes sold on MLS
23 between December, 2007 and the time of the appraisal in the market area of the subject property,
24 all were bank owned properties (S.R. 1-1(a), (b), 1-2(e)(i), 2-1(a), (b), 2-2(b)(iii), and the Conduct
25 Section of the Ethics Rule);
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b. Respondent used inappropriate sales in the Sales Comparison Approach. Respondent considered only sales arranged by Equity Finders LLC. These transactions included significant concessions, which were not analyzed in Respondent's report. Units offered on MLS from parties other than Equity Finders LLC were not analyzed. Competing units outside of the subject property development did not support the inflated sale prices influenced by Equity Finders LLC. The subject properties and all of Respondent's comparables in the Sales Comparison Approach were part of the unsold inventory that were being marketed to straw buyers (S.R. 1-1(a), (b), 1-4(a), 2-1(a), (b), and 2-2(b)(viii));

c. Based on a and b above, Respondent prepared a misleading report (Conduct Section of the Ethics Rule, S.R. 1-1(a), (b), and 2-1(a), (b)); and

d. Respondent failed to provide a true and correct copy of the appraisal reports and associated work files when requested. Respondent failed to cooperate with the investigation (Business and Professions Code Section 11328).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Office of Real Estate Appraisers issue a decision:

1. Revoking or suspending Real Estate Appraiser License Number AL034266, issued to James J. May;
2. Ordering James J. May to pay the Director of the Office of Real Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409;
3. Ordering James J. May to pay the Director of the Office of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and
4. Taking such other and further action as deemed necessary and proper.

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DATED: 3/27/12

Original Signed

ELIZABETH SEATERS
Acting Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant

SD2012703139
accusation.rtf